since it was *held,* that a railroad company is only liable for the failure to exercise ordinary care in seeing that the movable hassocks provided in a chair car do not project into the aisle. *Bassell* v. *Hines,* (C. C. A., 6th Circuit, December, 1920), 269 Fed. 231.

In general the common carrier of passengers is liable for the failure to exercise the highest degree of care and prudence consistent with the exercise of its business. *Memphis St. Ry. Co.* v. *Bobo,* 232 Fed. 708; *Meyer* v. *St. Louis Co.,* 54 Fed. 116. The basis of this seems to be that when the passenger delivers himself into the custody of the carrier, he submits himself to his care and relies upon the carrier's protection from all the hazards of the journey. *Indianapolis Co.* v. *Horst,* 93 U. S. 291, 23 L. Ed. 898. Since the basis of this rule is protection of the passenger from the dangers peculiarly incident to the instrumentality of transportation, the reason for the rule ceases when questions arise as to liability for the trifling dangers that are found upon the railroad car in the same way that they might be present in the walks of every-day life. Stumbling over a hassock which is under the control of the passenger takes away the responsibility that is present in the case of those elements of travel that are within the sole control and management of the carrier. Hence the general weight of authority supports the principal case in holding that only ordinary care need be exercised by the carrier in the cases of obstructions placed in the aisle and within the control of passengers. Thus, baggage left in the aisle and causing injury places no liability on the carrier unless there has been actual notice to the carrier's servants of its presence there, or it has been there such a time as to imply constructive notice. *Burns* v. *Penn. R. Co.,* 233 Pa. 304; *Palmer* v. *Penn. Co.,* 111 N. Y. 488, 18 N. E. 859; *Atkinson* v. *Dean,* 198 Ala. 262, 73 So. 479. On the other hand, if it appears that the carrier has had time to notice the presence of the baggage, as in *Chicago and A. R. Ry. Co.* v. *Buckmaster,* 74 Ill. App. 575, where a bag was left in the aisle two hours, or where the porter of the car has had actual notice of the presence of the bag in the aisle, the carrier has been held liable for the injuries resulting therefrom. *Levien* v. *Webb,* 61 N. Y. Supp. 1113. In only a few cases are there any intimations of a different rule from that in the principal case. In *Heineke* v. *Chi. Ry. Co.,* 279 Ill. 210, 116 N. E. 761, a higher degree of care seems necessarily implied from the statement of the court to the effect that if the carrier *might* have known of the presence of the baggage, it would be liable. And in *Pitcher* v. *Old Colony Co.,* 196 Mass. 69, 81 N. E. 876, the statement of the trial court that the carrier must exercise "the highest degree of care consistent with the practical carrying on of its business" was not criticised. For a collection of cases of this type, see 13 L. R. A. (N. S.), 482, and 43 L. R. A. (N. S.) 1050.

CARRIERS—RATE REGULATION: FIXING RATES ON SINGLE CLASS OF COMMODITIES—Suit to restrain the railroad from receiving any other compensation for carrying certain classes of property than that specified in the order of the State Railroad Commission. The railroad claims that the order did not allow sufficient revenue to reimburse it on such commodities, and yield a fair return. Plaintiff claims that revenue from whole intrastate business of de-

fendant may be taken into account, in determining remuneration. *Held,* state may not select certain goods, and compel railroad to carry without remuneration, even though revenue from intrastate business as a whole gives a profit. *Vandalia Railroad Co.* v. *Schnull,* (Feb., 1921), U. S. Supreme Court.

This decision clinches the doctrine laid down in *N. Pac. Ry. Co.* v. *North Dakota,* 236 U. S. 585, 13 MICH. LAW REV. 676. The basis of that decision was that the State may not segregate one class of goods, and compel a railroad to carry it without substantial compensation, for this might compel carrying some other class of goods at a double profit. A railroad may be compelled to operate a branch passenger line at an actual loss, if its whole state passenger service gives remuneration; *Mo. Pac. Ry. Co.* v. *Kansas,* 216 U. S. 262. But it is now settled that in deciding whether passenger rates are confiscatory, the passenger service must be considered by itself, and not in connection with freight; *Norfolk & W. Ry. Co.* v. *Conley,* 236 U. S. 605; *Pa. Rd. Co.* v. *Philadelphia County,* 220 Pa. St. 100; see *Groesbeck* v. *Duluth, S. S. & A. Ry. Co.,* 250 U. S. 607. In regard to freight, it is not essential that the railroad earn the same percentage of profit on all classes of service. See *N. Pac. Ry. Co.* v. *North Dakota, supra.* The Supreme Court seems to have been feeling its way to the position taken in the *North Dakota* case, and the principal case. In *Minneapolis & St. Louis R. Co.* v. *Minn.,* 186 U. S. 257, it was suggested that each case must be determined on its own merits, although the contention of the railroad, that if the rate on the particular commodity were to be applied to all other classes of commodities, the road could not pay operating expenses, was answered by saying that the Commission need not reduce all rates; but may reduce one, if considered too high. The difficulty of determining the cost of transporting a given commodity was brought out in *N. Pac. R. Co.* v. *North Dakota,* 216 U. S. 579, and it was held that where there are too many elements of uncertainty in determining it, the constitutional question is not presented. See *Atl. Coast Line Rd. Co.* v. *Florida,* 203 U. S. 256. If the determination of the cost of carrying a single class of commodities were clearcut and exact, there could be no quarrel with the principal case, as that would be a business-like method. But it may well be that temporarily, the public interest is best served by permitting certain commodities to be carried at a large profit, while compelling others to be carried without remuneration. Differences in rates and percentage of profit are undoubtedly unavoidable; they should not be disproportionate. Hence, it seems difficult to fix a rate without relation to other rates, and to the whole schedule of rates. *Southern Ry. Co.* v. *Atlanta Works,* 128 Ga. 207. But with improvement in accounting, the principal case would be correct. Perhaps it is in advance of the time. Cf. *Brooks-Scanlon Co.* v. *Rd. Commission,* 251 U. S. 296. And it would seem that it is not the railroad, which makes a profit from its intrastate business as a whole, but rather the shipper of other commodities, on which the rate must be disproportionately high, who has the right to complain.

CHAMPERTY AND MAINTENANCE—CONTRACT PROHIBITING DISMISSAL OF ACTION WITHOUT ATTORNEY'S CONSENT.—An attorney made a contract with